

Example 3. Pre-acquisition election by T. P is the common parent of the P Group. On December 31, 2008, P acquired all of the stock of T from X, the common parent of the X Group. T had been a member of the X Group since 1999. P did not make the election described in § 1.1502-21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to T, the portion of the carryback period for which T was a member of the X Group. Pursuant to section 172(b)(1)(H), the X Group elected to make a Five-Year Carryback of its 2008 CNOL back to 2003. A portion of this CNOL is attributable to T pursuant to § 1.1502-21(b)(2)(iv)(A). In 2009, the P Group incurred a CNOL of \$1,000, \$600 of which is attributable to T pursuant to § 1.1502-21(b)(2)(iv)(A). Pursuant to section 172(b)(1)(H), the P Group elected a Five-Year Carryback with regard to its 2009 CNOL. P did not make the election pursuant to paragraph (b)(3)(ii)(C) of this section to waive any portion of the period during which T was included in the X Group. The Five-Year Carryback election by the X Group with respect to its 2008 CNOL (which includes the portion of the CNOL attributable to T) does not disqualify the P Group from electing a Five-Year Carryback with regard to its 2009 CNOL. Therefore, the P Group may carry back its CNOL, including the portion attributable to T, in accordance with § 1.1502-21 and the rules of this section.

(c) through (h)(8) [Reserved] For further guidance, see § 1.1502-21(c) through (h)(8).

(9) *Section 172(b)(1)(H)*—(i) *Applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) after June 23, 2010, if such return was not filed on or before such date. However, a consolidated group may apply this section to any consolidated Federal income tax return that is not described in the preceding sentence.

(ii) *Expiration date.* The applicability of this section will expire on June 21, 2013.

[T.D. 9490, 75 FR 35645, June 23, 2010, as amended at 75 FR 44901, July 30, 2010]

§ 1.1502-22 Consolidated capital gain and loss.

(a) *Capital gain.* The determinations under section 1222, including capital gain net income, net long-term capital gain, and net capital gain, with respect to members during consolidated return years are not made separately. Instead, consolidated amounts are determined for the group as a whole. The consoli-

dated capital gain net income for any consolidated return year is determined by reference to—

(1) The aggregate gains and losses of members from sales or exchanges of capital assets for the year (other than gains and losses to which section 1231 applies);

(2) The consolidated net section 1231 gain for the year (determined under § 1.1502-23); and

(3) The net capital loss carryovers or carrybacks to the year.

(b) *Net capital loss carryovers and carrybacks*—(1) *In general.* The determinations under section 1222, including net capital loss and net short-term capital loss, with respect to members during consolidated return years are not made separately. Instead, consolidated amounts are determined for the group as a whole. Losses included in the consolidated net capital loss may be carried to consolidated return years, and, after apportionment, may be carried to separate return years. The net capital loss carryovers and carrybacks consist of—

(i) Any consolidated net capital losses of the group; and

(ii) Any net capital losses of the members arising in separate return years.

(2) *Carryovers and carrybacks generally.* The net capital loss carryovers and carrybacks to a taxable year are determined under the principles of section 1212 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they were sustained, and losses carried from taxable years ending on the same date, and which are available to offset consolidated capital gain net income, generally are absorbed on a pro rata basis. Additional rules provided under the Internal Revenue Code or regulations also apply, as well as the SRLY limitation under paragraph (c) of this section. See, e.g., section 382(1)(2)(B).

(3) *Carryovers and carrybacks of consolidated net capital losses to separate return years.* If any consolidated net capital loss that is attributable to a member may be carried to a separate return year under the principles of § 1.1502-21(b)(2), the amount of the consolidated

net capital loss that is attributable to the member is apportioned and carried to the separate return year (apportioned loss).

(4) *Special rules*—(i) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net capital loss may be carried.

(ii) *Special status losses.* [Reserved]

(c) *Limitations on net capital loss carryovers and carrybacks from separate return limitation years.* The aggregate of the net capital losses of a member arising (or treated as arising) in SRLYs that are included in the determination of consolidated capital gain net income for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate of the consolidated capital gain net income for all consolidated return years of the group determined by reference to only the member's items of gain and loss from capital assets as defined in section 1221 and trade or business assets defined in section 1231(b), including the member's losses actually absorbed by the group in the taxable year (whether or not absorbed by the member). The principles of § 1.1502-21(c) (including the SRLY subgroup principles under § 1.1502-21(c)(2)) apply with appropriate adjustments for purposes of applying this paragraph (c).

(d) *Coordination with respect to consolidated return change of ownership limitation occurring in consolidated return years beginning before January 1, 1997.* If a consolidated return change of ownership occurred before January 1, 1997, the principles of § 1.1502-22A(d) apply to determine the amount of the aggregate of the net capital loss attributable to old members of the group (as those terms are defined in § 1.1502-1(g)), that may be included in the net capital loss carryover under paragraph (b) of this section. For this purpose, § 1.1502-1(g) is

applied by treating that date as the end of the year of change.

(e) *Consolidated net capital loss.* Any excess of losses over gains, as determined under paragraph (a) of this section (without regard to any carryovers or carrybacks), is also referred to as the consolidated net capital loss.

(f) *Predecessors and successors.* For purposes of this section, the principles of § 1.1502-21(f) apply with appropriate adjustments.

(g) *Overlap with section 383*—(1) *General rule.* The limitation provided in paragraph (c) of this section does not apply to net capital loss carryovers (other than a hypothetical carryover like those described in § 1.1502-21(c)(1)(i)(D) and a carryover like those described in § 1.1502-21(c)(1)(ii)) when the application of paragraph (c) of this section results in an overlap with the application of section 383. For a similar rule applying in the case of net capital loss carryovers like those described in §§ 1.1502-21(c)(1)(i)(D) and (c)(1)(ii), see § 1.1502-15(g).

(2) *Definitions*—(i) *Generally.* For purposes of this paragraph (g), the definitions and nomenclature contained in sections 382 and 383, the regulations thereunder, and §§ 1.1502-90 through 1.1502-99 apply.

(ii) *Overlap.* (A) An overlap of the application of paragraph (c) of this section and the application of section 383 with respect to a net capital loss carryover occurs if a corporation becomes a member of the consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 382 limitation with respect to that carryover (the section 383 event).

(B) If an overlap described in paragraph (g)(2)(ii)(A) of this section occurs with respect to net capital loss carryovers of a corporation whose SRLY event occurs within the six month period beginning on the date of a section 383 event, then an overlap is treated as also occurring with respect to that corporation's net capital loss carryover that arises within the period beginning with the section 383 event and ending with the SRLY event.

(C) For special rules in the event that there is a SRLY subgroup and/or a loss subgroup as defined in § 1.1502-91(d)(1)

with respect to a carryover, see paragraph (g)(4) of this section.

(3) *Operating rules*—(i) *Section 383 event before SRLY event*. If a SRLY event occurs on the same date as a section 383 event or within the six month period beginning on the date of the section 383 event, paragraph (g)(1) of this section applies beginning with the tax year that includes the SRLY event.

(ii) *SRLY event before section 383 event*. If a section 383 event occurs within the period beginning the day after the SRLY event and ending six months after the SRLY event, paragraph (g)(1) of this section applies starting with the first tax year that begins after the section 383 event.

(4) *Subgroup rules*. In general, in the case of a net capital loss carryover for which there is a SRLY subgroup and a loss subgroup (as defined in §1.1502-91(d)(1)), the principles of this paragraph (g) apply to the SRLY subgroup, and not separately to its members. However, paragraph (g)(1) of this section applies—

(i) With respect to a carryover described in paragraph (g)(2)(ii)(A) of this section only if—

(A) All members of the SRLY subgroup with respect to that carryover are also included in a loss subgroup with respect to that carryover; and

(B) All members of a loss subgroup with respect to that carryover are also members of a SRLY subgroup with respect to that carryover; and

(ii) With respect to a carryover described in paragraph (g)(2)(ii)(B) of this section only if all members of the SRLY subgroup for that carryover are also members of a SRLY subgroup that has net capital loss carryovers described in paragraph (g)(2)(ii)(A) of this section that are subject to the overlap rule of paragraph (g)(1) of this section.

(h) *Effective date*—(1) *In general*. This section generally applies to taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999. However—

(i) In the event that paragraph (g)(1) of this section does not apply to a particular net capital loss carryover in the current group, then solely for purposes of applying paragraph (c) of this section to determine a limitation with respect to that carryover and with re-

spect to which the SRLY register (consolidated taxable income determined by reference to only the member's or subgroup's items of income, gain, deduction, or loss) began in a taxable year for which the due date of the return was on or before June 25, 1999, the principles of §1.1502-21(c)(2) shall be applied without regard to the phrase “or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)””; and

(ii) For purposes of paragraph (g) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986, applies and which results in a section 382 limitation shall constitute a section 383 event.

(2) *Prior periods*. For certain taxable years ending on or before June 25, 1999, see §1.1502-22T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

[T.D. 8823, 64 FR 36114, July 2, 1999]

§ 1.1502-23 Consolidated net section 1231 gain or loss.

(a) *In general*. Net section 1231 gains and losses of members arising during consolidated return years are not determined separately. Instead, the consolidated net section 1231 gain or loss is determined under this section for the group as a whole.

(b) *Example*. The following example illustrates the provisions of this section:

Example. Use of SRLY registers with net gains and net losses under section 1231. (i) In Year 1, T sustains a \$20 net capital loss. At the beginning of Year 2, T becomes a member of the P group. T's capital loss carryover from Year 1 is subject to SRLY limits under §1.1502-22(c). The members of the P group contribute the following to the consolidated taxable income for Year 2 (computed without regard to T's net capital loss carryover under §1.1502-22):

	P	T
Year 1 (SRLY)		
Ordinary		
Capital		(20)
Year 2		
Ordinary	10	20
Capital	70	0